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No. 697

# In the Supreme Court of the United States

OCTOBER TERM, 1931

UNITED FRUIT COMPANY, PETITIONER

*v.*

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The opinion of the Court of Claims granting plaintiff's motion to strike defendant's third and fourth special defenses (Pet. App. 1a–5a) is reported at 114 C. Cls. 154. The opinion of the Court of Claims on the merits (Pet. App. 26a–34a) is reported at 288 F. 2d 489.

### JURISDICTION

The judgment of the Court of Claims was entered on April 7, 1961. A timely petition for rehearing was denied on October 4, 1961. The time for filing a petition for a writ of certiorari was extended to February 1, 1962, by order of the Chief Justice. The petition for a writ of certiorari was filed on Febru-

ary 1, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

## QUESTION PRESENTED

Whether the rates of compensation fixed by the Postmaster General for the transportation of the mails by steamship included payment for the elements of bag weight and cartage, as well as for carriage of the net contents.

## STATUTE INVOLVED

Title 39 of the United States Code, Section 654(a), provides as follows:

> (a) Except as provided in subdivision (b) of this section, for transportation of the mails, (1) between the United States or its Territories or possessions and any foreign country, (2) between the United States and its possessions or its naval or military forces abroad, or (3) between any such possession or naval or military forces and any other such possession or naval or military forces, the Postmaster General may allow, in the case of a vessel of the United States, compensation not in excess of 80 cents a pound for letters and post cards and 8 cents a pound for other articles (including parcel post), and in the case of a foreign vessel, compensation not in excess of the sea transit rates prescribed from time to time by the Universal Postal Union Convention: *Provided*, That nothing herein shall limit the authority of the Postmaster General to enter into contracts for the transportation of mails under the provisions of the Merchant Marine Act of 1928 at the rates of compensation therein authorized.

## STATEMENT

Petitioner is a steamship owner and operator of a steamship line in foreign commerce between New York and New Orleans and various ports in Central and South America, the Panama Canal Zone, and islands in the Caribbean area (Finding 2; Pet. App. 34a). For years, as required by law, it has transported domestic and transit mails tendered by the Postmasters at New York and New Orleans at the post office platforms for delivery to foreign ports[1] (Finding 9; Pet. App. 37a). Petitioner also transported mail sacks containing empty sacks being returned to the country of origin. Most of these empty sacks had originally contained mails sent by steamship to the United States or to a foreign country, and which were being returned to the country of origin through the United States postal service.[2]

On June 16, 1950, petitioner's vice-president sent a letter to the Assistant Postmaster General protesting against the refusal of the Department to allow any compensation for steamship transportation for the weight of empty sacks, and the refusal to include the weights of mail sacks in the weights of mails, and expressing the view that gross weights of all mails,

[1] At all times involved in these actions, the transportation of mails by ship from the United States was required by statute to be performed at rates fixed by the Postmaster General. 18 U.S.C. 1724 (Finding 5; Pet. App. 7a).

[2] Some of the empty sacks were air mail sacks which had contained mails flown into the United States and which were being returned by steamship. The Court of Claims ruled that petitioner is entitled to compensation for the carriage of these sacks (Pet. App. 27a, 33a–34a). The United States has not contested this liability.

including sack containers, as well as empty sacks tendered by United States postmasters were an obligation of the Department and that compensation should be allowed and paid at the applicable rates. It was also stated that empty sacks "will be accepted and transported with the distinct understanding that compensation will be claimed and demanded at the rates specified in the Postal Laws and Regulations for Other Articles" (Finding 19; Pet. App. 44a–46a).

On July 14, 1950, the Acting Assistant Postmaster General replied, *inter alia*, that with very few exceptions payment for the carriage of letters and other articles and the sacks in which they were contained, and for the return of the empty sacks, was universally based upon the weight of the letters and post cards and other articles, exclusive of the sacks (Finding 20; Pet. App. 46a–48a).[3]

On September 29, 1950, petitioner sent a further letter to the Assistant Postmaster General in which it persisted in its position and requested that it be furnished with information as to the weight of the sacks carried (Finding 21; Pet. App. 49a). Thereafter the Post Office Department continued to tender mails to petitioner and the United States postal au-

[3] This practice of paying compensation for the carriage of the letters and the sacks in which they were contained, based on the weight of the letters alone, was of long standing and is referred to in two published opinions of the Assistant Attorney General for the Post Office Department: 1 Op. Assistant Attorney General for Post Office, 773 (1882); 2 Op. Assistant Attorney General for Post Office, 762 (1889); see also the 1924 and 1925 Ann. Reports of the Postmaster General (Def. Ex. 23 and 24) and the 1931 Manual, Foreign Distribution Scheme of New York Post Office (Def. Ex. 19).

thorities in the Canal Zone and Caribbean area began to furnish petitioner with gross weights of mails dispatched on vessels. Petitioner filed public vouchers with the Post Office Department for compensation on the basis of the gross weights furnished. These claims were disallowed and the Post Office Department revised the vouchers and made payment on the basis of the net weights of the mails transported (Finding 22; Pet. App. 49a). Petitioner sent a further letter to the Assistant Postmaster General on July 23, 1954, reiterating its previous protests, and, in addition, serving notice that on and after August 1, 1954, it would demand reimbursement for expenses in trucking mails from the post offices to the piers (Finding 26; Pet. App. 51a).

Thereafter petitioner brought two suits in the Court of Claims under 28 U.S.C. 1491, to recover the balance of compensation allegedly due for weights of sacks containing mails, for empty sacks transported by steamship, and for reimbursement of expenses for trucking mails from the post offices to the steamship piers. The two suits were consolidated for hearing.

The Court of Claims held that the rate fixed by the Postmaster General for the carriage of mail covered all services incidental thereto and that petitioner was not entitled to additional compensation. The court observed that the practice of paying compensation for the carriage of letters and post cards and the sacks in which they were contained, based on the weight of the letters and post cards alone, was of long standing (Pet. App. 29a–39a), and that, if there had been any intention to pay additional compensa-

tion for the carriage of the sacks, the regulations would have so provided (Pet. App. 29a). Judgment was allowed only for empty air mail sacks enclosed in bundles of other empty sacks, the amount of recovery to be subsequently determined (see footnote 2, *supra*, p. 3). An application for rehearing was denied on October 4, 1961.

## ARGUMENT

The Court of Claims was clearly correct in deciding that the rates of compensation fixed by the Postmaster General included payment for bag weight and cartage as well as for carriage of the net contents. Its decision is in accord with the old and established practice of the Post Office Department of paying compensation for the carriage of the mails based on the weight of the letters alone. Moreover, the issue is very narrow and, as presented, basically factual. There is no question of law for review by this Court.

1. To focus attention on what is offered for this Court's determination it should be pointed out that, even in petitioner's view, the core of the dispute is whether the decision below is predicated on erroneous findings of fact by the Trial Commissioner (Pet. 13, 16). The controverted question is whether the rates of compensation, as fixed by the Postmaster General, were intended to cover, and included payment for, bag weight and cartage, in addition to carriage of the net contents. In this connection, petitioner specifically challenges the court's finding that the "Post Office has always paid for all elements of ocean mail transportation on a basis computed on a net rather

than gross weight" (Pet. 13; Finding 9; Pet. App. 48a).

There is no reason, however, for this Court to scrutinize the Court of Claims' findings which show that the practice of paying compensation for the carriage of letters and post cards and the sacks in which they were contained, based on the weight of the letters and post cards alone, was both old and consistent. For a long time the course of action of the Post Office Department shows clearly that it intended the compensation fixed for the carriage of the letters and post cards to include the carriage of the things containing the letters and post cards (Findings 20, 28; Pet. App. 48a, 53a). See footnote 3, *supra*, p. 4.

Petitioner insists that the letter of July 14, 1950, from the Acting Postmaster General to petitioner (*supra*, p. 4) proves that no compensation was paid for sacks enclosing the mails, nor for empty sacks sent from the United States to foreign countries to which they belonged (Pet. 13). On the contrary, as the Court of Claims observed, this letter stated what the long-continued practice had been and that this practice would be continued until such time as a change in procedure might be adopted by the Universal Postal Union. Petitioner's protest was rejected and the Department's answer was equivalent to saying that the rates covered all the services required to transport the mails. Since the Postmaster General, as petitioner concedes, had the authority to fix the rates, this necessarily concluded the matter for the present suit which is necessarily based upon the rates actually fixed. See *infra*, p. 9.

2. Petitioner asserts that the decision in the instant case is in conflict with the Court of Claims' earlier decision in this case that, for jurisdictional purposes, the mail includes not only the letters themselves, but also the containers (Pet. 18).[4] If we understand petitioner's argument, it is that, since the sacks were held to be a part of the mails for the purposes of the jurisdiction of the Court of Claims over suits for the carriage of the mails, petitioner is automatically entitled to compensation based upon the weight of the mails including the sacks, and the weight of the empty sacks returned. The simple answer lies, of course, in the court's ultimate determination that the rates of compensation fixed by the Postmaster General, while computed on the net weight of the mail, did include payment for the elements of bag weight and cartage, as well as for carriage of the contents. Moreover, even if there were a conflict in principle between decisions of the same court, in the same case, this would not be a basis for certiorari since the later decision would be controlling.

3. Finally, petitioner insists that implicit in the Court of Claims' decision that the rates of compensation fixed by the Postmaster General included pay-

[4] The United States argued in the court below that the subject matter of petitioner's claim is the carriage by sea of property owned or possessed by the United States on merchant vessels owned or operated by petitioner and is therefore within the exclusive jurisdiction of the United States District Court under the Suits in Admiralty Act, 46 U.S.C. 741–749. The court rejected this argument (Pet. App. 1a–5a). In the event certiorari is granted, the United States reserves the right to reassert this defense.

ment for bag weight and cartage there lurks an important question of the interpretation of certain provisions of the Universal Postal Union Convention (Pet. 3, 4, 16, 19). The assertion is that the "decision supports the survival of the ancient practice of the Post Office Department in calculating compensation for steamship transportation pursuant to R.S. 4009, instead of on the basis of maritime transit rates (sea transit rates) authorized as a rate base * * * by the Act of, February 14, 1929, 39 U.S.C. 654(a)" (Pet. 16; see also Pet. 20–21). In this, petitioner is merely restating its argument that the traditional ocean mail system is wrong and that the accepted compensation scheme is unfair. But the rule is that the way in which the Postmaster General fixes the mail rate and the method of its measurement is not for the Court of Claims to decide in a suit such as this. *United Fruit Co.* v. *United States*, 144 C. Cls. 154, 158 (Pet. App. 5a); see also *United States* v. *Jones*, 336 U.S. 641. If petitioner believed that the rates were not fair and reasonable, or that they deprived petitioner of property, the remedy was to seek direct review of those rates. This was not done. Instead, petitioner now seeks to attack the rates collaterally in the present proceeding based upon those rates—which it cannot do.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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MARCH 1962.

U.S. GOVERNMENT PRINTING OFFICE: 1962